**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 6196 of 2002**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-**

**HONOURABLE MS.JUSTICE H.N.DEVANI** Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**MAHAVIR EXPORTS - Petitioner(s)**
**Versus**
**UNION OF INDIA & 2 - Respondent(s)**

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**Appearance :**
MR PARESH M DAVE for Petitioner(s) : 1,
MR SN THAKKAR for Respondent(s) : 1,
MR JITENDRA MALKAN for Respondent(s) : 1 - 3.

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**CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA**
**and**
**HONOURABLE MS.JUSTICE H.N.DEVANI**
**Date : 06/10/2005**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)**

1 This petition challenges order dated 20/03/2002 made by the Government of India, Ministry of Finance, Department of Revenue.

2 The petitioner, a proprietary concern, exported various goods, including readymade garments in 37 different consignments to Germany between November,1992 to February,1994. Thereupon, the claim of duty draw back was made, approved by respondent No.3 and total draw back to the tune of Rs.7,34,681/- was allowed and paid by different cheques.

3 It appears that because the German buyer went bankrupt the petitioner could not realize the sale proceeds of the 37 exports made. Therefore, on 26/02/1999 respondent No.3 issued show cause notice proposing to recover the draw back amount which was allowed and paid to the petitioner by relying upon provisions of Rule 16A of Customs and Central Excise

Duties Draw Back Rules, 1995 (Drawback Rules). According to respondent No.3 as the sale proceeds of the exports had not been realised within the time permitted by the Foreign Exchange Regulations Act, 1973 (including extended period) the authority was entitled to recover the draw back paid. On 18/01/2000 an addendum to the show cause notice was issued seeking to recover the draw back with interest. It is an accepted position that during Financial Year 1999-2000 the petitioner paid back the entire draw back amount by different challans.

4 However, the petitioner by its reply dated 02/02/2000 resisted applicability of Rule 16A of the Drawback Rules as according to the petitioner the said rule had been inserted on 06/12/1995, i.e much after the actual transaction took place, and hence could not be applied retrospectively. A decision of the Government of India in Re.Rangi International, 2000(88)ECR 525 (GOI) was relied upon and pointed out to respondent No.3. However, respondent No.3 did not accept the explanation tendered and framed an

order on 11/05/2000 effecting recovery of the draw back.

5 The petitioner carried the matter in appeal before Commissioner (Appeals) and on 20/08/2001 the appeal came to be allowed by relying upon the decision of Government of India in the case of Rangi International (supra). Thereupon respondent No.2 preferred Revision Application before Government of India against the aforesaid appellate order. On 20/03/2002 Government of India passed the impugned order No.68/02 allowing the Revision Application and setting aside the order of Commissioner (Appeals). It is this order which is assailed in this petition.

6 Mr.Paresh M.Dave, learned Advocate appearing on behalf of the petitioner has invited attention to the Drawback Rules, Section 75 of the Customs Act, 1962 and Section 37 of the Central Excise Act,1944 to point out that though rule making power is available both under section 75 of the Customs Act and Section 37 of the Central Excise Act, the two provisions are

materially different and hence the Drawback Rules cannot be applied to the excise component of the Drawback in absence of a provision similar to second proviso u/s.75(1) of the Customs Act. He, therefore, urged that the decision of Government of India in case of Rangi International (supra) which had considered this position was squarely applicable to the facts of the case and the respondent authority while passing the impugned order dated 20/03/2002 had failed to consider the same.

7 As against that Mr.Malkan appearing on behalf of respondents sought to support the impugned order on the ground that the same was a speaking order containing reasons and this Court should not substitute the reasons. However, in so far as the impugned order does not refer to the earlier order, it was submitted by Mr.Malkan that in the circumstances, the impugned order may be set aside and the matter be remanded to Government of India to decide the Revision Application afresh after considering the earlier decision in case of Rangi

International (supra).

8 It is not necessary for the Court to undertake an exercise of analysing and interpreting the provisions considering the fact that Government of India itself in an identical fact situation in case of Rangi International (supra) has already completed the exercise. The authority has while passing the order on 11/06/1999 in case of Rangi International categorically found that till the insertion of Rule 16A in the Drawback Rules neither the provisions nor the procedure for recovery of central excise component of draw back were available either in the Central Excise Act or the Drawback Rules. Thereafter, relying on the Apex Court decision in the case of Cannanore Spg. & Wvg. Mills Ltd., AIR 1970 SC 1950 = ECR C 334 SC and in the case of Ambalal Vs. Union of India, 1983 ECR 1935D (SC) = AIR 1961 SC 264, it is stated that rule making authority under the Central Excise Act is not vested with power to make rules with retrospective effect. Applying the ratio of the two judgments of the Apex Court it has been held

that : *"it can be construed that all payments made towards the Central Excise component of drawback before 6.12.1995 cannot be recovered even though the export proceeds have not been realised".* Thus, Government of India enunciated the legal position and accordingly set aside the orders of the lower authority and allowing the Revision Application in case of Rangi International.

9 In the present case undisputed facts are that the drawback paid to the petitioner pertains to central excise duty component and this has been recorded by Commissioner (Appeals) in his order dated 20/08/2001. It is further undisputed that the decision of Rangi International (supra) was cited before respondent No.3 as well as respondent No.1 but both the authorities have chosen to ignore the said decision, while Commissioner (Appeals) has based his decision on the order made by Government of India in case of Rangi International (supra). The entire affidavit-in-reply also is silent as regards the earlier decision rendered by Government of India

in case of Rangi International (supra). In these circumstances, the impugned order of the Revisional Authority cannot be permitted to stand.

10 The position in law is well settled that any Authority or Forum which is discharging judicial or quasi-judicial functions is bound by a decision rendered by an Authority or Forum of coordinate jurisdiction. In the event the Authority or the Forum is not in agreement with decision rendered by an Authority or Forum having coordinate jurisdiction the only recourse available is to have the matter referred to a Superior Forum or a Larger Bench. The Authority or the Forum just cannot ignore an earlier decision rendered by the Authority/Forum of coordinate jurisdiction. If this is permitted it would lead to chaos and would be against basic canons and judicial propriety. It is necessary for the personalities constituting the Authority or the Forum to bear in mind that the decision is not of the person manning the post but is a decision of the Authority or Forum and hence personalities do not

count.

11 The submission that the matter may be restored to the Revisional Authority for deciding afresh requires to be stated to be rejected. It is not a case where a decision is pointed out before this Court without the attention of the authority being invited to the said order. Nor is it a case where an order/decision has come into existence or to the knowledge subsequently i.e. after the authority decided the matter. In the circumstances, allowing second innings to the authority would amount to putting the petitioner to unwarranted hardship and harassment for the negligence and lapse of the authority to deal with the matter in accordance with law.

12 In these circumstances, the impugned order made by Government of India on 20/03/2002 cannot be allowed to operate, the same is hereby quashed and set aside. The order of Commissioner (Appeals) shall stand revived and become operative.

13 Rule made absolute. The petition is allowed accordingly. There shall be no order as to costs.

Sd/- Sd/-
(D.A.Mehta, J) (H.N.Devani,J)

m.m.bhatt